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GOOGLE LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO**

ANIBAL RODRIGUEZ, *et al.* individually and  
on behalf of all other similarly situated,

Plaintiffs,

vs

GOOGLE LLC, *et al.*

Defendant.

Case No. 3:20-CV-04688 RS

**DECLARATION OF EDUARDO E.  
SANTACANA IN SUPPORT OF  
GOOGLE LLC'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR RELIEF  
FROM CASE MANAGEMENT SCHEDULE**

The Honorable Richard Seeborg

Date: December 9, 2021

Time: 1:30 p.m.

Place: Courtroom 3 - 17<sup>th</sup> Floor

Action Filed: July 14, 2020

Trial Date: Not Yet Set

1 I, EDUARDO E. SANTACANA, declare:

2 1. I am an attorney licensed to practice law in the State of California and am a partner  
3 with the law firm of Willkie Farr & Gallagher LLP, located at One Front Street, San Francisco,  
4 California 94111, counsel for Defendant Google LLC (“Google”) in the above-captioned action.  
5 Unless otherwise stated, the facts I set forth in this declaration are based on my personal  
6 knowledge. If called to testify as a witness, I could and would testify competently to such facts  
7 under oath.

8 2. I submit this declaration in support of Google’s Opposition to Plaintiffs’ Motion for  
9 Relief from Case Management Schedule filed herewith.

10 3. Attached hereto as **Exhibit A** is a true and correct copy of a draft Joint Stipulation  
11 and Proposed Order to Continue Discovery Deadlines (“Case Schedule Stipulation”) Plaintiffs’  
12 attorney, James Lee, sent to me on August 5, 2021.

13 4. Attached hereto as **Exhibit B** is a true and correct copy of the Case Schedule  
14 Stipulation with my proposed redlines, which I sent to James Lee on August 9, 2021.

15 5. In early February, Judge Tse granted in part and denied in part motions to compel,  
16 resulting in an Order that Google produce certain documents from a pending litigation in Arizona.  
17 Google completed that production on March 24 and April 2, 2021.

18 6. Between December 16, 2020, and February 19, 2021, Google produced several  
19 thousand “non-custodial” documents comprising documentation about GA for Firebase and the  
20 Web & App Activity Control.

21 7. In a letter to Plaintiffs’ counsel dated February 12, 2021, I designated on behalf of  
22 Google three ESI custodians whose files Google agreed to search for potentially relevant and  
23 responsive documents. Those three custodians are Dave Monsees (for WAA), Steve Ganem (for  
24 GA for Firebase), and Frances Ma (for the Firebase SDK more generally).

25 8. During the period of time before the Court ruled on Google’s motion to dismiss the  
26 First Amended Complaint, Google refused to produce documents related solely to Plaintiffs’  
27 “secret scripts in the Firebase SDK” theory, *i.e.*, Firebase-related documents that were unrelated to  
28 GA for Firebase, the named product in the Original and First Amended Complaints. Given the

1 Court's ruling on that motion to dismiss and Plaintiff's subsequent decision not to re-accuse  
2 Firebase SDK of containing "secret scripts" that were invading their privacy, Google continues to  
3 object to producing documents that are not related to one of the enumerated products or features in  
4 Plaintiffs' operative complaint—generally speaking, WAA, GA for Firebase, the AdMob and  
5 Firebase integration, and the Cloud Messaging and GA for Firebase integration.

6 9. Plaintiffs first identified the integration of GA for Firebase with AdMob and with  
7 Cloud Messaging as supportive of their claims in the Second Amended Complaint, filed June 11,  
8 2021. Between June 11, 2021, and the Court's August 18, 2021 Order on Google's motion to  
9 dismiss the Second Amended Complaint, Google objected to and did not produce documents  
10 relating solely to AdMob or Cloud Messaging.

11 10. Google began producing documents from the files of previously identified  
12 custodians on July 8, 2021.

13 11. On July 9, 2021, counsel for Plaintiffs James Lee and I had a one-on-one call to  
14 discuss Mr. Lee's request for a negotiated extension of case deadlines. The Declaration of Mark  
15 Mao filed with Plaintiffs' instant motion characterizes this phone call and a subsequent phone call,  
16 but, to my knowledge, Mr. Mao was not present for those calls. During the July 9 call, Mr. Lee  
17 explained that Google's refusal to produce documents about AdMob and Cloud Messaging during  
18 the pendency of the motion to dismiss the Second Amended Complaint would likely create a delay  
19 that would imperil the fact discovery deadline. Mr. Lee proposed a 180-day extension of the  
20 discovery deadlines. I told Mr. Lee that I would relay his request to my client and that we would  
21 be back in touch. I also asked him why a shorter extension, such as an extension that would match  
22 the time period of pendency of the motion to dismiss, would not be fairer. Mr. Lee said that  
23 Plaintiffs' preference was a longer extension.

24 12. On July 22, 2021, Mr. Lee and I had another one-on-one phone call. During that  
25 call, I relayed to Mr. Lee that Google would not agree to a 180-day extension because AdMob and  
26 Cloud Messaging had only been introduced into the case a month earlier, and there was no reason  
27 yet to believe an extension would even be necessary—the Court could dismiss Plaintiffs' theories  
28 on AdMob and Cloud Messaging, or the discovery necessary to address those issues could be

1 completed by the existing discovery deadline. Nevertheless, in recognition of the likely time  
2 period between the filing of the Second Amended Complaint and the ruling on Google's motion to  
3 dismiss, and given the holidays would fall within the extension contemplated, I told Mr. Lee that  
4 Google would agree to a ~60-day extension (to January 11) pending more information about how  
5 the case would proceed. In the end, the Court issued its ruling just two months and seven days  
6 after the filing of the Second Amended Complaint.

7 13. On the same July 22 phone call, I told Mr. Lee that Google would remain open to  
8 considering further extensions of the case schedule if they were merited, but that it would not  
9 agree in advance to any such further extension. In particular, Mr. Lee indicated that the Court's  
10 ruling on the pending motion to dismiss the Second Amended Complaint would determine  
11 whether Plaintiffs wanted more time. I took no position on whether Google would agree to a  
12 future request for a case schedule extension.

13 14. Following our phone call, on August 5, Mr. Lee sent me a draft stipulation  
14 memorializing our agreement for a 60-day extension. That draft is attached as **Exhibit A** to this  
15 declaration. In it, Mr. Lee proposed language that appeared to go farther than the agreement I  
16 made on the phone by seeking to commit Google to some further process on a case extension. In  
17 particular, Mr. Lee's draft stated: "the parties agree to negotiate a second extension as needed after  
18 the Court has issued an order on the pending motion to dismiss." Though that language was non-  
19 committal, I returned a redline to Mr. Lee on August 9 that amended it to read: "the parties agree  
20 to negotiate in good faith *whether and to what extent* a second extension may be needed after the  
21 Court has issued an order on the pending motion to dismiss." That redline is attached as **Exhibit B**  
22 to this declaration. The redline is the version of the stipulation that Plaintiffs filed with the Court.  
23 Mr. Lee responded to my redline with an e-mail stating "Eduardo, your edits are good with us."

24 15. This Court issued its ruling on the motion to dismiss the Second Amended  
25 Complaint on August 18, 2021. But Plaintiffs did not raise the issue of a case extension again. The  
26 first time any member of Plaintiffs' counsel's team contacted any member of Google's team  
27 concerning a second case extension was on October 21, 2021, this time prompted not by the  
28 Court's ruling, but by my October 12, 2021 e-mail to Plaintiffs' counsel offering deposition dates

1 for three percipient witnesses and two Rule 30(b)(6) topics about which Plaintiffs had  
2 (unsuccessfully) moved to compel a deposition of Google in May 2021. That exchange is  
3 discussed in more detail below.

4 16. Since Google did not believe an extension was merited, and that it could complete  
5 discovery within the January 11 deadline, Google likewise did not raise the issue of a second case  
6 extension with Plaintiffs in the wake of the Court's ruling on the Second Amended Complaint.

7 17. Currently pending is Google's motion to dismiss the Third Amended Complaint.  
8 Google has not withheld responsive documents in light of the pendency of that motion.

9 18. Google completed its custodial document production for Messrs. Ma, Ganem, and  
10 Monsees using nearly all the search terms that Plaintiffs proposed to Google on September 8,  
11 2021, well in advance of the then-scheduled discovery cut-off of January 11, 2022. On April 23,  
12 2021, Google sent Plaintiffs' counsel the list of search terms it was using for these productions. I  
13 sent Plaintiffs' counsel an e-mail on September 9, 2021, informing them that Google had  
14 completed its custodial ESI production for these three custodians.

15 19. In response to that production, Plaintiffs requested another slate of search terms be  
16 used to search the same custodial files. Google objected to using any more search terms on the  
17 grounds that it had already used dozens of fair and targeted terms that were proposed by Plaintiffs.  
18 Nevertheless, Google agreed to use the vast majority of the new terms Plaintiffs proposed, and it  
19 completed its production of documents from those three custodians' ESI using the new search  
20 terms in late October and the first week of November 2021.

21 20. Meanwhile, Google prepared in advance to use Plaintiffs' search terms on the  
22 custodial files of two new custodians: Ed Weng for AdMob and Todd Hansen for Cloud  
23 Messaging, bringing Google's custodian count to five. Google completed producing documents  
24 from those two custodians' files using all agreed-upon search terms on November 12, 2021. The  
25 November 12 production comprised almost 10,000 pages. Google also produced non-custodial  
26 documents relating to AdMob and Cloud Messaging responsive to Plaintiffs' document requests.

27 21. As of today, Google has completed its production of all custodial documents from  
28 all five custodians' files using search terms on which the parties have agreed. But Plaintiffs have

1 now requested another slate of new search terms be used. The parties have been negotiating  
2 whether and to what extent to use Plaintiffs' newest slate of search terms. Google has made a  
3 compromise offer that would enable it to use the bulk of Plaintiffs' new terms, with some  
4 modifications, and finish producing documents from all five custodians well in advance of the fact  
5 discovery cut-off. It appears that one dispute will remain for Judge Tse to decide—whether  
6 Google should be required to use product name search terms without limiters, *e.g.*, “WAA,” by  
7 itself.

8 22. On October 12, 2021, I sent Plaintiffs' counsel an e-mail informing them that  
9 Google would make its final custodial production (with all of the outstanding and then-agreed-  
10 upon search terms) by the end of October. My e-mail offered deposition dates for Messrs. Ma,  
11 Ganem, and Monsees in the first and second weeks of November, and it indicated that Mr. Ganem  
12 would also testify as to the March 23, 2021 Rule 30(b)(6) topics about which Plaintiffs moved to  
13 compel in May 2021. In my e-mail, I wrote: “Plaintiffs should be prepared to depose these  
14 individuals both in their individual capacities as well as in their representative capacity. According  
15 to the normal rule, these individuals will not sit twice for deposition.”

16 23. That night, Plaintiffs' counsel responded to my e-mail asking how many documents  
17 would be produced in the supplemental production, but otherwise ignoring the deposition dates.  
18 (In the end, that production at the end of October was roughly 500 documents per custodian, one  
19 to two weeks in advance of the deposition dates I had offered).

20 24. On October 14, 2021, Plaintiffs served their portion of two discovery letter briefs  
21 seeking 19 more custodians and certain rulings relating to Google's data retention policies.

22 25. On October 18, 2021, Plaintiffs' counsel sent Google's counsel an e-mail requesting  
23 a videoconference to discuss deposition scheduling and expressing concern that Google's  
24 document production would not be completed sufficiently in advance of the depositions Google  
25 offered.

26 26. On October 19, I responded by e-mail, explaining that “Google anticipates  
27 producing fewer than 700 additional documents from Mr. Ganem's custodial files by October 25,”  
28 and that the volume of documents from the files of Messrs. Ma and Monsees would be similar and

1 would be produced by the end of October. I also objected to the notion that Plaintiffs could depose  
2 Mr. Ganem repeatedly by noticing serial Rule 30(b)(6) topics.

3 27. On October 21, 2021, Plaintiffs' counsel James Lee e-mailed on the same thread for  
4 the first time and raised the question of a case schedule extension for the first time since the  
5 August 13, 2021 stipulation extending the discovery deadline 60 days. In his e-mail, Mr. Lee  
6 complained that Google had not yet answered, that "when Plaintiffs first asked for a continuance  
7 of all the deadlines by 6 months, you were only ready to stipulate to an initial continuance of the  
8 discovery deadline for 60 days," and listing discovery deficiencies he perceived in Google's  
9 discovery responses and productions that he believed would justify a case schedule extension. Mr.  
10 Lee then asked that Google "honor your agreement to work on future extensions in good faith,"  
11 and proposed a six-month extension of all deadlines (in addition to the two-months extension the  
12 parties had previously negotiated). During the parties video meet-and-confer on this issue, I  
13 offered Plaintiffs a discovery deadline extension "on the order of weeks" as a professional  
14 courtesy, but indicated Google did not believe a six-month extension was merited. Plaintiffs'  
15 counsel said that a weeks-long extension was not enough. I also offered a potential compromise  
16 whereby Google would provide a list of its affirmative defenses to Plaintiffs before its Answer is  
17 due, but Plaintiffs rejected that compromise as well.

18 28. Also on October 21, 2021, Plaintiffs served a third discovery letter brief seeking that  
19 Google use more search terms with its five existing custodians, even though the parties had never  
20 met and conferred over this new list of search terms. The first time Google saw the list of new  
21 search terms was in the draft letter brief.

22 29. On October 25, 2021, Plaintiffs served a fourth discovery letter brief relating to a  
23 privileged document Google clawed back after it was inadvertently produced to Plaintiffs.

24 30. By October 29, 2021, the parties had reached an impasse on all the issues listed  
25 above, except the dispute over how to handle Rule 30(b)(6) depositions in this case, which appears  
26 to be resolved, or will be soon. Plaintiffs then filed the instant motion for relief from the case  
27 schedule.  
28



1           31. After the instant motion was filed, Plaintiffs indicated—in their portion of a joint  
2 CMC statement—for the first time that they intended to file several other motions to compel  
3 relating to source code, Google’s privilege log, unspecified “RFP-specific” disputes, and others.  
4 As of today, Plaintiffs have not invited Google to meet and confer by video on any of those issues,  
5 nor served any such motions on Google, as would be required by Judge Tse’s Standing Order in  
6 order to file a discovery motion.

7           32. In all, Google has made twenty-three separate document productions comprising  
8 custodial documents from five custodians, documents from the Arizona litigation, and non-  
9 custodial documents.

10          33. Judge Tse has granted a single motion to compel, ordering Google to produce a  
11 subset of documents from another litigation. Google complied with that Order and there is no  
12 other Order with which it has not yet complied.

13          34. Google served its privilege log on November 2. On August 25, I had informed  
14 Plaintiffs that Google would serve its privilege log for all outstanding document productions at the  
15 end of October. Plaintiffs never responded to that e-mail. Shortly before the end of October, I  
16 informed Plaintiffs that Google would need two extra days, to November 2, to serve its privilege  
17 log.

18          35. Google has never agreed to produce source code in this case. Whenever Plaintiffs  
19 have raised the issue, Google has said that it does not agree to produce source code but that it is  
20 open to meeting and conferring on the issue if Plaintiffs wanted to pursue it.

21          36. Google has produced non-public documentation about the functionality of GA for  
22 Firebase and served a detailed interrogatory response comprehensively outlining the data flow for  
23 GA for Firebase, the consent checks Google uses for GA for Firebase data, how the data is stored,  
24 and other technical details. Those details include disclosing to Plaintiffs in that verified  
25 interrogatory response that when WAA is turned off, Google does not associated GA for Firebase  
26 data with a Google user’s account, nor associate it with their identity. Instead, using sophisticated  
27 encryption techniques, Google ensures that the data *cannot* be associated with a particular user’s  
28



1 identity. Google also offered a Rule 30(b)(6) deposition for early November to discuss the data  
2 flow and other functionality questions, per Plaintiffs' deposition notice on this issue.

3 37. So as not to unnecessarily burden the Court with more paper that includes issues  
4 irrelevant to the Court's determination and to avoid the filing of an additional sealing motion, I  
5 have not included here the correspondence and related documents that I have described above, but  
6 I would promptly file them if the Court believes they would be helpful to adjudicating the motion.  
7 The only exhibits I have included are the drafts of the case extension stipulation because the  
8 Declaration of Mark Mao claims that I made agreements as to the case extension that those  
9 exhibits demonstrate never happened.

10  
11 Executed November 12, 2021, at San Francisco, California.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct.

14  
15 /s/ Eduardo E. Santacana  
16 EDUARDO E. SANTACANA  
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